

No. 42511-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

MARTHA GARCIA VASQUEZ,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Paula Casey, Judge  
Cause No. 11-1-00644-5

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether sufficient evidence was produced at trial to support Vasquez's convictions for possession of methamphetamine with intent to deliver and unlawful use of a building for drug purposes.

2. Whether the State presented sufficient evidence of the location of the school bus route stops on the date of the offense.

B. STATEMENT OF THE CASE.

The State accepts the appellant's statement of the substantive and procedural facts. Any additional facts will be included in the argument section below.

C. ARGUMENT.

1. The State produced sufficient evidence to permit a rational trier of fact to find beyond a reasonable doubt that Vasquez committed the crimes of unlawful possession of methamphetamine with intent to deliver and unlawful use of a building for drug purposes.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

"[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record

evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, supra, at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). It is the function of the fact

finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

Vasquez was charged with both unlawful possession of methamphetamine with intent to deliver within 1000 feet of a school bus route stop and unlawful use of a building for drug purposes as either a principal or accomplice. CP 9-10. The jury was instructed as to accomplice liability. CP 31. To prove the possession charge, the State was required to prove that she or an accomplice (1) possessed methamphetamine (2) with the intent to deliver. CP 36. To prove the charge of unlawful use of a building for drug purposes, the State had to prove that Vasquez or an accomplice was either the owner or lessee of a building and (2) knowingly made the building available for use for the purpose of delivering, selling, storing, or giving away a controlled substance. CP 41.

Vasquez does not argue in her opening brief that these crimes were not committed. Rather, she argues that there was insufficient evidence that she was connected to the crimes. Therefore, if the State presented sufficient evidence to show that she solicited, commanded, encouraged, requested, aided, or

agreed to aid another person to commit the crimes, CP 31, the State met its burden.

There cannot be any serious dispute that Vasquez was aware that drugs were being stored at her residence and sold from there. Drugs, cash, a digital scale, and ledgers were found in the master bedroom dresser and closet, where Vasquez's clothing and other property were located; she was found in the master bedroom when the search warrant was executed. See *e.g.*, RP 216-24.

It is true that presence and acquiescence, without more, are insufficient to prove accomplice liability. In re Pers. Restraint of Wilson, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979). "Rather, it is the intent to facilitate another in the commission of a crime by providing assistance through his presence or his act that makes the accomplice criminally liable." State v. Galisia, 63 Wn. App. 833, 840, 822 P.2d 303 (1992). An accomplice need not have the same mental state as the principal, State v. Amezola, 49 Wn. App. 78, 89, 741 P.2d 1024 (1987), nor be aware of the specific elements of the crime. State v. Berube, 150 Wn.2d 498, 508-09, 79 P.3d 1144 (2003).

There was no direct evidence presented at trial that Vasquez took part in any actual drug transaction. RP 81. She was not

charged with delivery of controlled substances. However, it was obvious that she lived at 8530 Steilacoom Road, Space 88. She was present the day the search warrant was served and the home searched. In a drawer in a dresser in the master bedroom were two bills from Comcast in the name of Martha Garcia, a name Vasquez also used, for service at that address. The billing dates were March 11 and April 2, 2011. RP 94-95. There was also a plethora of circumstantial evidence produced from which a rational trier of fact could reasonably conclude that Vasquez aided, or, at a minimum, agreed to aid in the sale of illegal drugs, thus establishing the element of intent to deliver.

A confidential informant purchased methamphetamine on three different occasions from Rogelio Pech Canche, RP 44, 52, 54. Canche and members of his family were seen going from the Steilacoom Road address to his address in Yelm at the times the confidential informant bought meth from him. RP 56, 268-69. Photographs found in the Steilacoom residence, as well as some found in the Yelm residence of Canche, showed that there was a close relationship between Vasquez and Canche and his wife, Virginia Santos Jimenez. RP 37, 64, 132-33. Leobardo Santos Pioquinto, with whom Vasquez lived at the Steilacoom Road



address, was either a brother or a cousin of Jimenez. RP 35, 38. Jimenez owned the property at 8530 Steilacoom Road, Number 88. RP 40, 56.

Vasquez was arrested on April 26, 2011, the day the search warrant was executed at her residence. She was in the master bedroom. RP 93, 189. The master bedroom contained a large closet area that was not separated from the bedroom itself. RP 111. Women's clothing and items were found in that closet. RP 243, 261. The master bedroom contained a dresser, on top of which was a television. RP 120. In a drawer in that dresser was a notebook containing records of money owed by drug customers and phone numbers. RP 119-20. Also found in the dresser drawer were two more ledgers, the Comcast bills, six cell phones, RP 119-25, \$8662 in cash, RP 128, and a baggie containing 29.2 grams of meth, RP 136.

In the closet of the master bedroom was a jewelry box in which officers found two baggies containing 22.5 grams and 3.1 grams of meth and a digital scale, something commonly used by drug dealers to weigh the merchandise. RP 135, 216-17, 219. Two wallets, each containing Vasquez's identification, were found in the closet area. RP 222-23. One contained \$150 in U. S.

currency, the other \$140. RP 226, 257. In a purse found in the closet was \$772. RP 257. Also found in the residence were documents showing that Vasquez had transferred money in November of 2010 to people in Mexico, at least one of whom was Pioquinto's mother, in the amounts of \$190, \$6090, and \$510. RP 187. Other documents showing money transfers were referred to in testimony and admitted into evidence, but not specifically testified about. RP 186-87. In addition, the officers found some tax documents indicating that in 2009 Vasquez had a total income of \$2992.49, RP 187-88, and in 2010, her income was \$3894.26. RP 188. Since in November of 2010 she wired amounts just about equal to her income for 2009 and 2010, the logical presumption is that she was wiring money that she obtained outside of legal gainful employment, or it was Pioquinto's money. There was extensive testimony throughout the trial that Pioquinto was involved with Canche in selling drugs. See e.g., RP 49 (Pioquinto and Canche were together at a time a drug transaction with the confidential informant had to be postponed because Canche's vehicle had broken down.), RP 55 (Detective Casebolt had been involved in an 18-month-long investigation in which the Steilacoom address was associated with a drug-distributing organization out of Mexico.).

In the mobile home was a second bedroom, which was locked when the officers entered to execute the search warrant. RP 151. Officers forced entry and no key was discovered, RP 152, although they never searched for one. RP 243-44. 226.5 grams of meth were located there. RP 136, 248. A total of 281 grams of meth was found at the Steilacoom address, with a street value of approximately \$24,000. The total amount of cash found at that residence was \$9725.

Even if Vasquez was totally ignorant of what was in the second bedroom, there was so much evidence in the bedroom she shared with Pioquinto that she could not possibly have been unaware that drug dealing was going on from that house. Consenting to keeping drugs in her home for the purposes of sale can show an intent to encourage the unlawful activity. State v. Wilson, 95 Wn.2d 828, 832-33, 631 P.2d 362 (1981). The fact that she wired large sums of money to people in Mexico, including Pioquinto's mother, shows that she was, at a minimum, willing to disburse money made through the sale of drugs. The large amounts of cash found in her dresser drawer, wallets, and purse, indicate that she shared in the profits of the drug sales. The totality of the circumstances present in this case would permit any rational

trier of fact to conclude beyond a reasonable doubt that Vasquez was at least an accomplice to the sale of drugs and the use of the house for drug purposes. Criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” Delmarter, 94 Wn.2d at 638. There was sufficient evidence to support both convictions.

2. The evidence was sufficient to support the school bus route stop enhancement.

Vasquez acknowledges that the State proved that there were five school bus route stops within 1000 feet of Space 88 at 8530 Steilacoom Road, actually within 800 feet. RP 280-81. Instead, she argues that there was no proof that those same stops were in place at the time the crime was committed.

The arrests and execution of the search warrant occurred on April 26, 2011. RP 34. The trial occurred July 11<sup>th</sup> through 13<sup>th</sup>, 2011. Presumably school was not in session in July. Eric Weight, the director of transportation for the North Thurston Public School District testified about the location of the stops near the Steilacoom address. RP 277-81. He testified that “there’s (sic) actually three special education bus stops in the mobile home park, there’s one regular bus stop in the mobile home park, and there’s one just

outside on Steilacoom Boulevard outside the mobile home park.”  
RP 278. He pointed all of them out on a map, using the present  
tense to indicate the existence of the stops. RP 280.

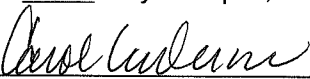
Unless common sense is completely dead, reasonable  
people would understand that stops in existence in July were in  
existence in April. A reasonable person testifying in July would be  
expected to explain if the stops had changed in that short time  
period. Further, even if one of them had, it seems unlikely that all  
five stops had been established within 1000 feet of Vasquez’s  
residence in the two and a half months that elapsed between the  
arrest and the trial. The fact that nobody mentioned the date of  
offense indicates that it was not considered a question to be  
addressed.

The school bus route stop enhancement should be affirmed.

#### D. CONCLUSION.

There was sufficient evidence produced at trial to support  
both of Vasquez’s convictions and the sentence enhancement.  
The State respectfully asks this court to affirm.

Respectfully submitted this 24<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
Carol La Verne, WSBA# 19229  
Attorney for Respondent

# THURSTON COUNTY PROSECUTOR

**April 24, 2012 - 4:09 PM**

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